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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,622

Applicant(s)

MORMAN ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☒ Claim(s) 17-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 121503.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 17-23 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 is dependent on itself. The Examiner assumes this is a typographical error, and that claim 17 is dependent on claim 16. Claims 18-23 are dependent on claim 17. For examining purposes the Examiner assumes that these are also dependent on independent claim 16.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 15 and 26-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 15 recites the limitation "the spunbonded fibers" in line 1. There is insufficient antecedent basis for this limitation in the claim.

5. Claims 26-32 recite "The [\_\_\_\_] has a basis weight". What has a basis weight? The bodyside liner? The first layer, the second layer, the layer of meltblown fibers? It is further noted that the language used in the claim is confusing... for clarity it should rather read in the lines of: "The \_\_\_\_ of claim 24 has a basis weight of...".

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by THOMAS et al. (US 6,049,024).

THOMAS et al. is directed to a composite nonwoven fabric for use as a one-piece top sheet and barrier fabric for disposable absorbent articles. (Abstract) In one embodiment of their invention, the reference teaches a spunbond-meltblown-spunbond trilaminate structure. (Col. 3, lines 65-67). The reference teaches the use of meltblown filaments of from about 2-15 microns in diameter. (Col. 5, lines 62-67). The spunbond filaments can be prepared from thermoplastic polymers. (Col. 6, lines 18-38) The nonwoven composite fabric can have an overall basis weight of from about 13 to 22 gsm. The spunbond and meltblown web components of the composite nonwoven fabric can be present in a ratio of from about 11 gsm to 1.5 gsm, respectively, up to about 19 gsm to 3 gsm. (Col. 6, lines 47-55) This is interpreted by the Examiner as the basis weight of the meltblown web being in the range from 1.5-3 gsm. The reference also teaches the use of a surfactant to provide hydrophilicity to the composite. (Col. 7, lines 1-5) THOMAS et al. further teaches that the disposable absorbent articles comprise a topsheet, a liquid impervious back sheet and a core of absorbent material. (Col. 8, lines 1-3)

It is the Examiner's interpretation that the THOMAS et al. reference anticipates the presently claimed disposable garment. The reference teaches a structure with a liquid

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impervious sheet, a liquid pervious bodyside liner and an absorbent material in between. The reference teaches a bodyside liner or top sheet that comprises meltblown fibers with a diameter from about 2 to 15 microns and a SMS construction. The reference also anticipates the claimed basis weight of less than 2.0 gsm for the thin layer of fine fibers/meltblown layer.

8. Claims 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by GOLDWASSER (US 6,183,847).

GOLDWASSER discloses a coversheet or coverstock or top sheet (i.e., that portion of the product which is in contact with a person's skin) for use in the manufacturing of disposable absorbent products such as baby diapers and sanitary napkins. (Col. 1, lines 13-18) The reference teaches using a web that is a multi-component structure that includes at least one discontinuous fine fiber layer having a melt-blown content of greater than zero but less than 1.5 gsm. This provides for enhanced liquid containment and enhanced liquid transport in a single web. (Col. 2, lines 52-56) The reference teaches a SMS construction and also teaches the optional use of carded layers instead of solely spun-bonded layers as the outer layers. (Col. 5, lines 15-45)

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 9, 10-12 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over THOMAS et al. as applied above, and further in view of GOLDWASSER (US 6,183,847).

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THOMAS et al. fails to teach a basis weight of less than 1.5 gsm for the thin layer of fine fibers/meltblown layer.

GOLDWASSER discloses a coversheet or coverstock or top sheet (i.e., that portion of the product which is in contact with a person's skin) for use in the manufacturing of disposable absorbent products such as baby diapers and sanitary napkins. (Col. 1, lines 13-18) The reference teaches using a web that is a multi-component structure that includes at least one discontinuous fine fiber layer having a melt-blown content of greater than zero but less than 1.5 gsm. This provides for enhanced liquid containment and enhanced liquid transport in a single web. (Col. 2, lines 52-56) The reference teaches a SMS construction and also teaches the optional use of carded layers instead of solely spun-bonded layers as the outer layers. (Col. 5, lines 15-45)

Since both references are directed to disposable absorbent garments the purpose disclosed by GOLDWASSER would have been recognized in the pertinent art of THOMAS et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disposable garment of THOMAS et al. and provide with a thin layer of fine fibers in the bodyside liner with a basis weight of less than 1.5 gsm with the motivation of enhancing the liquid containment and liquid transport in a single web as disclosed by GOLDWASSER above.

11. Claims 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over THOMAS et al. as applied above, and further in view of JANKEVICS et al. (US 6,139,941).

THOMAS et al. fails to teach a basis weight of less than 1.5 gsm for the thin layer of fine fibers/meltblown layer.

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JANKEVICS et al. also relates to nonwoven webs suitable for use as a topsheet or body liner in a disposable diaper. (Col. 1, lines 14-15) The structure is a SMS fabric laminate. (Col. 3, line 40) The reference teaches that the basis weight of the meltblown fabric layer can be in the range of 0.5 to 6.0 gsy [0.6-7 *gsm*], the meltblown fibers have an average diameter of 1-10  $\mu\text{m}$  and the spunbonded fibers an average diameter of 10-30  $\mu\text{m}$ . (Col. 6, lines 1-10)

Since both references are directed to topsheet materials the purpose disclosed by JANKEVICS et al. would have been recognized in the pertinent art of THOMAS et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the basis weight of the meltblown layer of the composite and provide with a basis weight of less than about 0.8 *gsm* with the motivation of producing a fabric laminate with improved uniformity as compared to spunbond topsheets known in the art as disclosed by JANKEVICS et al. (col. 3, lines 46-51)

12. Claims 8, 13-19, 22, 24, 25, 28, 29 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over THOMAS et al. and JANKEVICS et al. (US 6,139,941) as applied above, and further in view of VARONA et al. (US 2004/0127873 A1).

VARONA et al. is directed to an absorbent article with a breathable outer cover, a topsheet and an absorbent core disposed in between. (Abstract)

VARONA et al. teaches the use of a superabsorbent material mixed with pulp fluff. [0068]

With regards to claims 14 and 15, the reference teaches using bonded-carded webs in the construction of nonwoven fabrics for the topsheet. [0055] The reference also teaches the use of poly (lactic acid) fibers in the topsheet. The reference teaches that it has been found that such

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poly (lactic acid) fibers are more wettable than many synthetic fibers such as polyethylene and polypropylene. Furthermore, poly (lactic acid) fibers are generally biodegradable. Thus, the use of such fibers within the absorbent articles is desirable to improve the disposability aspects of these articles. [0054] With regards to claim 17, it is the Examiner's position that Figures 3-5 of the reference meets the claimed limitation. Although the prior art of record does not explicitly teach the claimed SAM retention it is reasonable to presume that this property is inherent to bodyside liner produced from the teachings of THOMAS et al. and JANKEVICS et al. and VARONA et al. Support for said presumption is found in the use of like materials (i.e. an SMS laminate construction with a meltblown layer with similar basis weight). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a SAM retention level of greater than 95 percent would obviously have been present on the laminate product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the material of THOMAS et al. and JANKEVICS et al. and provide it with superabsorbent materials motivated by the desire of increasing the absorbency capacity of the absorbent layer and further to use poly (lactic acid) fibers with the motivation of increasing the wettability of the topsheet and improving the disposability of the materials by including fibers that are generally biodegradable as disclosed by VARONA et al. (above)



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13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over THOMAS et al. and JANKEVICS et al. and VARONA et al. as applied above, and further in view of VUKOS et al. (WO 02/34184)

VUKOS et al. is also directed to absorbent garments and teaches the use of necking to produce a stretchable/extensible absorbent assembly. (Refer to abstract; page 6, lines 3-11; page 7, lines 20-23; claims) Therefore, it would have been obvious to one of ordinary skill in the art to neck the laminate motivated by the desire of providing the assembly with stretchable/extensible properties as taught by VUKOS et al. above.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

GERLACH et al. (WO 01/39880 A1) – cited by Applicants in IDS. On claim 13, this reference teaches a meltblown layer with a basis weight from 1-2 gsm.

BUTT, Sr. et al. (US 5,492,751) – cited by Applicants in IDS. Teaches a basis weight of from about 1.5 gsm to 26 gsm for the fine fiber layer.

### ***Double Patenting***

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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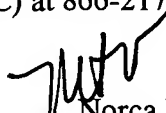
16. Claims 1-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/657,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application uses the language of "a liquid pervious bodyside liner comprising a nonwoven fabric laminate" that equates to the "liquid pervious, nonwoven fabric laminate" in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norca L. Torres-Velazquez  
Examiner AU 1771

January 25, 2005